

Members

Sen. Luke Kenley
Sen. Sue Landske
Sen. Rose Ann Antich-Carr
Sen. Anita Bowser
Rep. Robert Kuzman
Rep. Robert Behning
Rep. Ralph Foley
Professor Thomas B. Allington
Joe Champion, Esq.
Hon. James Kirsch
Jon Laramore
Dave Remondini
Jason Thompson
Heather Willis



CODE REVISION COMMISSION

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Authority: IC 2-5-1.1-10

MEETING MINUTES¹

Meeting Date: December 14, 2004
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Luke Kenley, Chairman; Sen. Sue Landske; Rep. Robert Behning; Rep. Ralph Foley; Professor Thomas B. Allington; Hon. James Kirsch, Chief Judge, Indiana Court of Appeals; Mr. Jon Laramore, representing Governor Joe Kernan; Mr. Dave Remondini, representing Chief Justice Randall T. Shepard, Indiana Supreme Court; Mr. Jason Thompson, representing Attorney General Steve Carter; Ms. Silvia Miller, representing Secretary of State Todd Rokita.

Members Absent: Sen. Anita Bowser; Sen. Rose Ann Antich-Carr; Rep. Robert Kuzman; Mr. Joe Champion; Rep. John Frenz.

Staff Present: Mr. John Stieff, Director, Office of Code Revision; Ms. Rebecca Mortell, Deputy Director, Office of Code Revision; Mr. Craig Mortell, Deputy Director, Office of Code Revision; Mr. Timothy Tyler, Recodification Editor and Senior Staff Attorney, Office of Bill Drafting and Research; Ms. Sarah Burkman, Senior Staff Attorney, Office of Bill Drafting and Research; Mr. Dick Sheets, Editorial Assistant, Office of Code Revision.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

I. CALL TO ORDER

The meeting was called to order at 1:20 p.m. by Senator Luke Kenley, Chairman.

II. REVIEW OF MINUTES

The Commission approved by consent the minutes of the Commission's last meeting on September 8, 2004.

III. INTRODUCTORY REMARKS

Mr. John Stieff, Director, Office of Code Revision, said there were four items before the Commission for consideration: (1) Finalization of the annual Technical Corrections bill to correct errors in the Indiana Code; (2) Legislation on a study topic assigned by the Legislative Council on administrative rule making procedures for bodies corporate and politic; (3) The reintroduction of legislation to change references from "poor relief" to "township assistance" in the Indiana Code; (4) The recodification of Title 20 of the Indiana Code (education).

IV. TECHNICAL CORRECTIONS BILL

Craig Mortell, Deputy Director of the Office of Code Revision (OCR), addressed the Commission about the 2005 Technical Corrections (TC) bill. He distributed:

- (1) PD 3843, the second draft of the 2005 TC bill;
- (2) a SECTION-by-SECTION outline of PD 3843; and
- (3) a supplementary outline setting forth the differences between PD 3843 and PD 3006, the first draft of the 2005 TC bill.

Mr. Mortell briefly discussed the contents of PD 3843 and answered questions from members of the Commission. Professor Allington called attention to an error in PD 3843: Due to a mistake made in 2003, the text of IC 33-33-64-4 is identical to the text of IC 33-33-64-5, and PD 3843 was correcting this duplication by striking the current text of IC 33-33-64-4 and inserting the text originally intended for IC 33-33-64-4. However, PD 3843 was also repealing IC 33-33-64-5, and Professor Allington pointed out that the repeal of IC 33-33-64-5 was unnecessary because PD 3843 was remedying the duplication by amending IC 33-33-64-4. Mr. Stieff and Mr. Mortell thanked Professor Allington for highlighting this error and assured the Commission that it would be corrected in the TC bill's next draft.

The Commission voted to approve PD 3843, with the correction of the error noted by Professor Allington, as an official product of the Commission. (HB 1398, authored by Representative Foley).

V. RULEMAKING PROCEDURES FOR BODIES CORPORATE AND POLITIC

Sarah Burkman, Senior Staff Attorney, Office of Bill Drafting and Research, explained the issue concerning the administrative rulemaking procedures used by Indiana's statutorily created bodies corporate and politic discussed at the Code Revision Commission's last meeting on September 8, 2004. She explained to the Commission the changes made in the latest draft to address this issue (PD 3977). This draft:

- (1) specifies that an instrumentality of state government (including a body corporate and politic or other corporation exercising essential government functions) is an agency for purposes of the rulemaking procedures set forth in IC 4-22-2;
- (2) strikes language that allows certain instrumentalities of state government to adopt rules without complying with IC 4-22-2;
- (3) authorizes instrumentalities to adopt rules necessary or appropriate to perform their duties and exercise their powers;
- (4) authorizes instrumentalities to adopt emergency rules;
- (5) requires instrumentalities to submit rules: (a) in effect before July 1, 2005; and (b) adopted at or after a public meeting of the instrumentality, but not in compliance with IC 4-22-2; to the Attorney General for review not later than October 1, 2005;
- (6) requires the instrumentality to submit documentation and a sworn statement that the rule was adopted at or after a public meeting;
- (7) requires the attorney general to approve or disapprove a submitted rule not later than

April 1, 2006;

(8) requires the publisher of the Indiana Register and the Indiana Administrative Code to:
(a) publish approved rules in the next volume of the Indiana Register; and (b) codify the rules in the next publication of the Indiana Administrative Code or the next Supplement to the Indiana Administrative Code.

Ms. Burkman answered several questions from Commission members about the latest draft. Mr. Jason Thompson commented that the bill addressed some of the concerns that the Attorney General's Office had. Mr. Laramore was initially concerned that the timeline for repromulgating rules was not sufficient, but he subsequently concluded that it was sufficient because the bill gives the entities emergency rulemaking powers. A question was also raised about the inclusion of the Indiana Historical Society in the bill. On motion of Representative Foley, the Commission agreed by consent to remove the Indiana Historical Society from the application of the bill. Representative Foley made an additional motion to amend existing language that specifies that IC 4-22-2 applies to an agency with rulemaking authority that is "expressly granted by, or may be implied from" a court ruling. The Commission agreed with Representative Foley's recommendation that the language be amended to state that IC 4-22-2 applies to an agency with rulemaking authority "derived or implied from" a court ruling. Finally, a motion was made to adopt as amended PD 3977, subject to Ms. Burkman's verification that the Indiana State Teachers' Retirement Fund is classified as a "body corporate and politic" under Indiana law. It was decided that Senator Landske would author the bill. (**Senate Bill 259**)

VI. CHANGING REFERENCES TO POOR RELIEF

Mr. Stieff said the revised version of the bill changing the term "poor relief" to "township assistance" throughout the Indiana Code had been prepared for introduction as instructed by the Commission. He said the reintroduced bill was straightforward and followed the directive of P.L.262-2003 requiring the Legislative Services Agency to prepare legislation for the 2004 legislative session to change the references. The bill was approved by the Senate during the 2004 session and received a favorable recommendation from the House Committee on Local Government. However, the bill did not advance from the House.

The Commission approved the bill by consent, and Senator Sue Landske agreed to introduce the bill during the 2005 session. (**Senate Bill 209**)

VII. TITLE 20 RECODIFICATION PROJECT

Mr. Stieff reported that LSA staff members had worked hundreds of hours during the last several weeks on the recodification of Title 20 project, meeting with interested parties to address queries raised in the preliminary drafts. As a result, most of the of questions had been resolved, although several still remained for Commission consideration. Mr. Stieff thanked all the interested parties who worked with LSA to resolve the questions.

The Commission reviewed a printout of sections containing the remaining queries. In addition, Kevin McDowell, chief legal counsel for the Department of Education, reviewed possible superseded sections in IC 20 concerning school corporation organization. Senator Kenley expressed concern about repealing some provisions identified by the Department of Education as obsolete unless it was clear that the provision no longer applied to anyone. For that reason, the Commission decided not to repeal several such provisions in the Indiana Code. Following a section-by-section analysis and discussion by Mr. Stieff and Commission members of the remaining queries, it was decided that certain sections would remain in the recodification bill but that other sections would be more appropriately placed into a companion bill.

The Commission approved by consent motions to approve the Title 20 recodification bill as amended (House Bill 1288, authored by Representative Foley) and the companion bill (SB 397, authored by Senator Landske).

VIII. ADJOURNMENT

Senator Kenley thanked the Commission and LSA staff for their work on this year's Commission

projects. The meeting was adjourned by Senator Kenley at 3 p.m.